

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6580 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RATIBHAI M PATEL

Versus

DISTRICT DEVELOPMENT OFFICER

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Appearance:

MR IM PANDYA for Petitioners

None present for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision:04/05/98

C.A.V. JUDGEMENT

1. The petitioners, in all three, who were the employees of the respondent-Chanasma Nagar Panchayat, filed this special civil application before this Court and prayer has been made for quashing and setting aside of the order passed by the Development Commissioner dated 19th November, 1986, annexure 'D' confirming thereunder the order passed by the District Development Officer, Mehsana dated 23rd July, 1986. Further challenge has

been made to the order annexure 'E' dated 18th December, 1986 of the respondent No.1.

2. The facts of the case are that the petitioner No.1 was appointed in the office of the respondent No.1 as Senior Clerk even prior to 1954. The petitioner No.2 was employed as Junior Clerk from 1st August, 1964 whereas the petitioner No.3 was employed as Tax Clerk since inception of Chanasma Nagar Panchayat i.e. since 1959. The petitioner No.1 was thereafter promoted to the post of Secretary of Chanasma Nagar Panchayat with effect from 1st April, 1986. From the said date the petitioner No.2 was promoted to the post of Senior Clerk, and the petitioner No.3 as Shops-cum-Octroi Inspector with effect from 1st June, 1986. These promotions have been given to the petitioners in pursuance of the resolutions of the General Meeting of the Chanasma Nagar Panchayat held on 10th March, 1986 bearing Nos. 177 to 179. In pursuance to those resolutions, the petitioners No.1 and 2 resumed their office on promotional posts with effect from 1st April, 1986 and the petitioner No.3 resumed on the promotional post w.e.f. 1st June, 1986. The respondent No.1 under its order dated 23rd July, 1986 passed in exercise of powers under section 294(4) of the Gujarat Panchayats Act, 1961 ordered that the resolutions No.177 to 179 passed by the Chanasma Nagar Panchayat should not be implemented and suspended the effect thereof though what the petitioners contended that he knew that the resolutions were in fact already implemented. The respondent No.3 preferred revision application against the aforesaid order of the respondent No.1 and the respondent No.2 vide its order dated 19th November, 1986 confirmed the order of the respondent No.1. The respondent No.1 then passed the order on 18th December, 1986, under which he has nominated the persons to the posts of Secretary, Senior Clerk and Shops-cum-Octroi Inspector of Chanasma Nagar Panchayat, copy of which has been submitted on the record of this special civil application as annexure 'E'. Hence, this special civil application.

3. The learned counsel for the petitioners contended that both the authorities, the respondents No.1 and 2, have committed serious illegality in passing of the impugned orders without giving any opportunity of hearing to the petitioners. It has next been contended that when the resolutions passed by the respondent No.3 have been given effect to or implemented and the petitioners joined on the promotional posts there was no question of exercise of powers under section 294 (4) by the respondent No.1 and confirming the said order by the

respondent No.2. Lastly, it has been contended that this Court has protected the petitioners and now when two petitioners have already retired from the services and one petitioner is working on the post of Chief Officer, this Court should quash those orders.

4. Nobody is present on behalf of the respondents to make oral submissions.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioners.

6. The learned counsel for the petitioners does not dispute that the promotions on the posts of Secretary, Senior Clerk and Shops-cum-Octroi Inspector could have been made only on the basis of the recommendations of the Selection Committee. The learned counsel for the petitioners further admit that though the resolutions have been passed by the respondent No.3 to give promotions to the petitioners on the aforesaid posts respectively but they were not approved for promotions by the Selection Committee. The Development Commissioner of the State of Gujarat has confirmed the order of the District Development Officer on the ground that the promotions of the petitioners were made by the Nagar Panchayat without obtaining prior approval of the Selection Committee. It has also noticed that the State Government issued specific instructions under the letter dated 21st August, 1985 and 7th April, 1986 for making promotions only on approval of the Selection Committee. So it is a case where the promotions have been given to the petitioners by the Nagar Panchayat without there being approval of the same by the Selection Committee. Promotion is also one of the mode of recruitment and promotion could have been made only in accordance with the rules laid down for the same or in the absence of any rule, in accordance with the provisions of Articles 14 and 16 of the Constitution and if the promotions are not made on the approval of the Selection Committee then the Nagar Panchayat has no authority to make the promotions of the persons of its own choice. That resolutions of the Nagar Panchayat giving promotions to the petitioners were not legal and they have rightly been ordered to be suspended by the respondent No.1 and the respondent No.2 has not committed any error to confirm that order. Otherwise also, it is not a case where the cases of the petitioners and all the eligible candidates have been considered by the Nagar Panchayat before passing the resolutions giving promotions to the petitioners. So the resolutions of the Nagar Panchayat giving promotions to

the petitioners were itself illegal and even if the respondent No.1 has not given opportunity of hearing to the petitioners before suspending the resolutions, then on this ground the orders impugned in this special civil application cannot be set aside. Moreover, the order of the respondent No.2 has been passed in the revision application filed by the Nagar Panchayat which has been filed for the benefit of the petitioners and in such case I fail to see how the petitioners could have made complaint that the respondent No.2 has not given any opportunity of hearing to them.

7. The last contention made by the learned counsel for the petitioners that this Court has protected the petitioners by way of interim relief and as such those order should be set aside, it is suffice to say that this contention is devoid of any substance. The interim orders are subject to final decision in the special civil application and in case ultimately the Court finds that there is no merits in the matter and the petition has to be dismissed then on the basis of the interim relief, which has been granted, the petitioners cannot be protected. It is a settled law that the interim orders passed by the court are subject to the final outcome of the matters. The impugned orders are perfectly legal and justified and merely because the petitioners have been protected by interim relief those orders cannot be quashed and set aside. Though the petitioners have no case on merits, because this Court has protected the petitioners, the orders should be taken to be illegal only for protection of the petitioners, that course cannot be adopted. It is no more res integra that the interim orders passed in the cases merge in the final order and in case the petition is dismissed then interim granted by this Court is of little help to the petitioners.

8. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated.

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